IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 661 of 2002

Rajendra Gulab Tadakhe
Prisoner No. C-1511,
Kolhapur Central Prison,
Kalamba, Kolhapur-416 004 .. Appellant
(Orig. Accused)

V/s.
The State of Maharashtra .. Respondent
(Orig. Complainant)

Ms. Pranali Shete Kakade for the Appellant.
Mr. A.M. Shringarpure, A.P.P. for the Respondent-State.

CORAM : V.M. KANADE, J.
DATED : 09.09.2004.

ORAL JUDGMENT :-

1. Heard the learned counsel appearing on behalf of the Appellant and the learned Assistant Public Prosecutor appearing on behalf of the State. The Appellant is challenging the judgment and order passed by the Additional Session Judge, Satara dated 30.3.2002 in Sessions Case No. 38 of 1999, whereby the Appellant was convicted under the offence under section 307 r/w 498(A) of the Penal Code and sentenced to suffer rigorous imprisonment for 7 years and 3 years respectively and further to a fine of Rs. 3000/- and Rs. 500/- and in default to suffer simple imprisonment for 6 months and 1 month respectively.

2. Prosecution case in brief is that the accused was working in the Police Department and he married the complainant in June sometime in the year 1988. The Appellant and his wife Anju resided in their ancestral

house at Gondola. Thereafter in the year 1996, the

accused got a residential quarter in the Police lines and since then, the accused alongwith wife and two children started residing separately in the official quarters.

3. The prosecution case is that the accused is addicted to consuming liquor and he used to beat his wife and demand money from her. It is the prosecution case that because of the behaviour of the accused, his wife was constrained to leave the matrimonial house. Inspite of the strained relations between husband and wife on account of the addiction of the accused to liquor, the wife continued to stay with him. Though on various occasions, she used to go and stay in her mother’s house at Pune, the prosecution case is that accused used to send false telegrams on various pretexts and the wife used to get back and stay with him.

4. On 21.9.1998, the accused returned from his duty and as a result of having consumed liquor and in the said condition, he assaulted his wife and threatened to kill her. The prosecution case is at that time complainant decided to leave the house. She put her clothes in the bag. At that time, the accused poured kerosene on her body and lit a matchstick, as a result

of which her clothes got fire and hearing her shouts, people from the locality gathered there and they

extinguished the fire by pouring water on the complainant. She was shifted to the hospital by the father and by the accused. Treatment was given to the complainant as also to the accused. Complaint was registered against the accused under section 307, 504, 506 of the Indian Penal Code. Statement of the witnesses were recorded. Charge-sheet was filed and the accused pleaded not guilty. The prosecution examined in all six witnesses. The defence examined the father of the accused as a defence witness.

5. The learned counsel appearing on behalf of the Appellant vehemently argued that there are omissions and contradictions to the evidence of PW. 1, as a result of which her evidence was not reliable. It was submitted that the accused also had sustained injuries and has taken her to the hospital. It is submitted that from the evidence on record, it is not clearly established that the accused was responsible for the condition, in which the complainant was found. It is submitted that the accused was entitled to be given the benefit of doubt as there is every possibility that the complainant may have tried to commit suicide by pouring kerosene on herself. It is submitted that the husband had also 7% burn injuries indicates that he has tried

to save the complainant. It is submitted that if the accused/appellant had intention to kill her, he would

not have tried to save her and got burnt in the process. It is submitted that so far as statement of the neighbours are concerned, namely PW 3 and PW 4, it is difficult to rely on the said statement and they appear to be got up witness. It is submitted that the prosecution could have adduced evidence of the son of the appellant and complainant and though their statement were recorded, these two witnesses were not examined and their statements were also not filed alongwith the chargesheet. It is submitted that therefore, adverse inference ought to be drawn against the prosecution case. The learned counsel appearing on behalf of the accused relied on the judgment of the Apex Court in the case reported in **1995 Cri.L.J. 3603 in Mahesh Chand v. U.T. Chandigarh** in support of her statement. In the above case, the Apex Court came to the conclusion that the findings given by the Trial Court should not be altered. In that behalf, sentence may be reduced from seven years to the period already undergone by the accused in the custody.

6. The learned Assistant Public Prosecutor appearing on behalf of the State vehemently opposed the statement made by the learned counsel appearing on behalf of the

appellant, submitted that the sole testimony of PW 1 complainant was sufficient to establish that the accused had poured kerosene on her and had committed the said act. It is submitted that the complainant had

sustained 47% burnt injuries and miraculously she has survived. It is submitted that her statement is corroborated by the statement of PW 3 and 4, who have stated before the Court that the complainant had told them that the husband has poured kerosene and had set her on fire.

7. The learned counsel appearing on behalf of the appellant has taken me through the oral evidence on record as also spot panchanama and the Judgment and order of the Trial Court. Injured complainant PW 1 has narrated the entire incident and in which she has categorically mentioned that her husband had poured kerosene on her and had set her on fire. Admittedly, the complainant has sustained 47% burn injuries. In her statement, she has given her entire history from the date of her marriage to the date of the incident. It is no doubt true that some of the statements which are made by her before the Court, particularly, the statement regarding cruelty meted out to by her husband and other minor circumstances, which had transpired during her married life were not recorded in the First Information Report, which was recorded by the Police.

These contradictions and omissions can not take away the truthfulness of her statement and testimony regarding the offence committed by the accused. Her testimony is further corroborated by PW 3 and PW 4, who have also stated that after her shouts of the

complainant, they came out of the house and complainant told them that the accused had set her on fire. PW 2 who is the mother of the complainant had also narrated the ill treatment meted out to the complainant after her marriage with the accused. Thus, in my view, the accused had committed the said act of setting her on fire. The findings of the Trial Court that the prosecution proved beyond reasonable doubt that the accused had committed an offence punishable under section 498(A) and 307 of the Indian Penal Code will have to be upheld.

8. Next question which falls for consideration is regarding the sentence awarded to the accused. Trial Court sentenced the accused to suffer rigorous imprisonment for seven years in respect of the offence under section 207 and three years for the offence under section 498(A) of the Indian Penal Code apart from the fine, which is imposed.

9. In the present case, the accused and complainant quarrelled on a number of occasions which was as a

result of addiction of the accused to liquor. Complainant also on various occasions left the accused and came back home under the hope that he would improve one day. The Trial Court has observed that the accused is a Police Constable and he is expected to know the consequences of breach of law and therefore, it came to

the conclusion that this was not a fit case to show leniency.

10. Appellant in the present case was initially arrested on 21.9.1998 and was in jail for a period of two months upto 21.11.1998. Thereafter, he was arrested again on 17.4.2001 and went in jail upto 3.8.2001 and thereafter he is in jail since 30.3.2002. The accused, therefore has undergone a sentence of three years and three months as of today. In the present case, considering the fact that the accused tried to save his wife by immediately taking her to the hospital and in that process suffered burn injuries to the extent of 7% indicates that the said action may have happened in the heat of moment and it was not a pre-mediated or planned action. The complainant and the accused have two children. Under the circumstances, I am of the view that the sentence of seven years should be reduced to five years. The accused would be entitled for a set off of the period, he has already undergone in prison. Appeal is partly

allowed in the above terms. The order to be communicated immediately to the Jail Superintendent by the Office. Certified copy expedited.

(V.M. KANADE, J.)